IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

WP(C).No. 27225 of 2007(N)

EP.96/2005 of SUB COURT, HOSDRUG
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PETITIONERS:
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1. **JAISON MATTAPPALLIL, S/O.VARKEY, RESIDING AT PARAMBA P.O. PARAMBA, HOSDURG TALUK.**

2. **JOSHI MATTAPPALLIL, S/O.VARKEY, RESIDING AT PARAMBA P.O. PARAMBA, HOSDURG TALUK.**

3. **ROY MATTAPPALLIL, S/O.VARKEY, RESIDING AT PARAMBA, P.O.PARAMBA, HOSDURG TALUK.**

BY ADV. SRI.SURESH KUMAR KODOTH

RESPONDENT:

SECRETARY, NILESHWAR BLOCK CO-OPERATIVE HOUSING SOCIETY P.O., NILESHWAR, HOSDURG TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

M.N.KRISHNAN, J

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W.P.(C) No.27225 OF 2007

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Dated this the 13th day of September 2007

JUDGMENT

This writ petition is filed to set aside Exts.P3 and P4 orders whereby the petitioners are directed to be arrested in pursuance of the execution of the decree. On an earlier point of time, a chance was given for a one time settlement and I am informed that Rs.25,000/- has been paid. It is also seen from the decree that it is personal as well as on the charge of a property. Ordinarily when there is a mortgage the court should pass a decree to proceed against the charged property and then for personal reliefs. But, unfortunately, it is the other way in this case and that has become final. The executing court cannot go beyond the decree. So one cannot hold that the petitioners cannot be arrested in execution of the decree. In order to enable the petitioners to make payment of the amount and to persuade the bank to proceed against the properties, I am inclined to grant them two months' time and direct the Sub Court, Hosdurg not to execute the warrant of arrest for a period of two months from today. Petitioners are directed to make payment of Rs.25,000/-(rupees twenty five thousand only) within one month from

today and on failure of the same, the benefit granted will stand automatically cancelled. If a proper representation is made to the bank, the bank may consider it sympathetically why it cannot proceed against the property first instead of against the person of the judgment debtors.

Writ petition is disposed of accordingly.

M.N.KRISHNAN, JUDGE

Cdp/-